

L. Preston Bryant, Jr.
Secretary of Natural Resources

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

BLUE RIDGE REGIONAL OFFICE

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
PRO-LINE PERFORMANCE, INC.
FOR THE SITE LOCATED AT THE
NORTH-EAST CORNER OF THE INTERSECTION OF TAYLORS
ROAD (ROUTE 691) AND VIRGINIA GOODE HIGHWAY (U.S.
ROUTE 220), FRANKLIN COUNTY, VIRGINIA
Permit No. WP4-08-1052**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d), between the State Water Control Board and Pro-Line Performance, Inc., regarding the site located at the North-east corner of the intersection of Taylors Road (Route 691) and Virginia Goode Highway (U.S. Route 220), Franklin County, Virginia, for the purpose of resolving certain violations of State Water Control Law and the applicable Virginia Water Protection Permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
7. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
8. "Pro-Line" means Pro-Line Performance, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Pro-Line is a "person" within the meaning of Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Order" means this document, also known as a Consent Special Order.
11. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
12. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution" for the terms and purposes of this chapter. 9 VAC 25-210-10.

13. "Property" or "Site" means the tract of land located at the North-east corner of the intersection of Taylors Road (Route 691) and Virginia Goode Highway (U.S. Route 220), Franklin County, Virginia, owned by Pro-Line.
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.14:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
15. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. 9 VAC 25-210-10.
16. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.
19. "Virginia Water Protection permit" or "VWP permit" means an individual or general permit issued by authority of the Board under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
20. "Regulations" means the "Virginia Water Protection Permit Program Regulations" found at 9 VAC 25-210 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. The Site contains an unnamed tributary ("UT") of Teels Creek, and is located in the Roanoke River drainage basin, Franklin County, Virginia. The UT of Teels Creek is a surface water.
2. The Site is authorized by VWP General Permit # WP4-08-1052 and the permit holder is Pro-Line Performance, Inc ("Pro-Line"). The permit authorizes Pro-Line, for the purpose of constructing a retail trailer sales lot and associated infrastructure, to permanently impact 297 linear feet of the UT of Teels Creek with no wetland impact. The authorized impact area is listed in the Joint Permit Application.
3. On January 30, 2009, Department compliance staff conducted an announced VWP Permit inspection at the Site. The inspection of the Site was in response to

a notification from Franklin County staff that the Site was under grade and work appeared to be occurring in the UT of Teels Creek.

4. Department compliance staff observed that approximately 466 linear feet of the UT of Teels Creek has been adversely affected in excess of the permitted amount of 297 linear feet permitted by grading of the stream bank, including the removal of the ordinary high water ("OHW") mark and deposition of sediment in the stream bed in association with the grading activity.
5. The grading of the stream bank and removal of the high water mark are considered dredging of a surface water and the deposition of sediments is considered a discharge of a pollutant.
6. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit dredging or filling of surface waters or discharging a pollutant without a VWP permit issued by the Director.
7. Pro-Line's VWP permit, No. WP-08-1052 Part I.A.1 limits Pro-Line's temporary or permanent impacts to 297 linear feet.
8. Pro-Line's VWP permit, No. WP-08-1052 Part I.A.2 requires that any changes to the authorized permanent impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-690-80, or another VWP permit application. The Department did not receive a Notice of Plan Change from Pro-Line.
9. Pro-Line's VWP permit, No. WP-08-1052 Part I.A.3 requires that any changes to the authorized temporary impacts to surface waters associated with this project shall require written notification to DEQ and restoration to preexisting conditions in accordance with the conditions of this permit authorization. The Department did not receive written notification from Pro-Line.
10. As a result of the inspector's observations, the Department issued a Notice of Violation (No. NOV-09-02-BRRO-R-002) to Pro-Line Performance, Inc., on February 12, 2009, for the violations cited in Paragraphs 6, 7, 8, and 9 of this section.
11. On February 11, 2009, the Department received a proposed Corrective Action Plan ("CAP") for stabilizing and restoring the bed and banks of the UT of Teels Creek on the Site to preexisting conditions and the Department approved the CAP on February 17, 2009.
12. On June 10, 2009, Department compliance staff conducted an inspection at the Site. The purpose of the inspection was to assess the status of the CAP. The Department determined that the CAP had been successfully implemented in order to stabilize and restore the bed and banks of the UT of Teels Creek.

13. Based on the results of the Site inspection, the Board concludes that Pro-Line has violated its VWP permit, No. WP-08-1052, the Va. Code and the Regulations, as noted above.
14. In order for Pro-Line to return to compliance, DEQ staff and representatives of Pro-Line have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15(8a) and (8d), the Board orders Pro-Line, and Pro-Line agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$10,920 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Pro-Line shall include its Federal Employer Identification Number with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Pro-Line for good cause shown by Pro-Line, or on its own motion pursuant to the Administrative Process Act after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Pro-Line admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Pro-Line consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Pro-Line declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Pro-Line to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Pro-Line shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Pro-Line shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Pro-Line shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Pro-Line intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Pro-Line. Nevertheless, Pro-Line agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - (a) Pro-Line petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - (b) the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Pro-Line.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Pro-Line from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Pro-Line and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Pro-Line certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Pro-Line to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Pro-Line.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Pro-Line voluntarily agrees to the issuance of this Order.

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Pro-Line Performance, Inc.
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And it is so ORDERED this 29th day of OCTOBER, 2009.

Steven A. Dietrich

Steven A. Dietrich, Regional Director
Department of Environmental Quality

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Pro-Line Performance, Inc. voluntarily agrees to the issuance of this Order.

Date: 8/26/09 By: [Signature], President
Mr. Kenny Ayers
Pro-Line Performance, Inc.

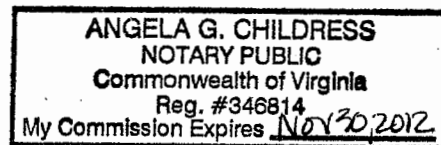
Commonwealth of Virginia

City/County of Va

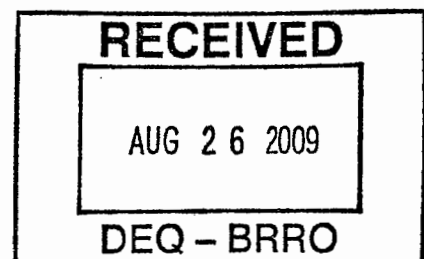
The foregoing document was signed and acknowledged before me this 26th day of
August, 2009, by Kenny Ayers who is President of Pro-Line Performance, Inc.
on behalf of the corporation.

[Signature]
Notary Public

My commission expires: NOV 30, 2012



Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Pro-Line Performance, Inc. shall:

1. Begin live stake vegetation (Live staking is a simple technique that installs a dormant cutting directly into the ground. This technique is often utilized where single stem plantings will provide adequate plant cover, slope stability and fish habitat) monitoring no later than September 2009 to verify an adequate survival rate. Survival rate shall be evaluated by counting living and dead stakes, and dividing living stakes by the total number of stakes installed. An adequate survival rate is accomplished when two consecutive annual reports meet or exceed the 80% survival rate which may include planted species and acceptable native volunteer tree and shrubs species that have colonized the site.
2. Submit the first monitoring results to the DEQ no later than November 1, 2009.
 - a. If a survival rate of 80% is not achieved at the end of the applicable monitoring period, then **Pro-Line Performance, Inc.** shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears the 80% survival rate could not be achieved. If DEQ thereafter so directs, **Pro-Line Performance, Inc.** shall submit to DEQ for review and approval an alternative CAP within 30 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP shall then be implemented by **Pro-Line Performance** in accordance with the schedule set forth in the alternative CAP.
 - b. If the performance criteria specified in the alternative CAP are not achieved by the end of the last monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then **Pro-Line Performance, Inc.** shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund to address any remaining corrective action required in the Final CAP or, as applicable, any previously submitted alternate CAP. **Pro-Line Performance, Inc.** shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. **Pro-Line Performance, Inc.** shall purchase mitigation bank credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.
3. Submit all requirements of Appendix A of this Order to:

Jerry Ford, Jr., Enforcement Specialist-Senior
Department of Environmental Quality
Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019

Jerry.Ford@deq.virginia.gov